



State of Utah

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Insurance Department

TODD E. KISER
Insurance Commissioner

BULLETIN 2015-8

TO: All Insurance Licensees

FROM: Todd E. Kiser, Utah Insurance Commissioner

DATE: May 8, 2015

SUBJECT: Inducement/Anti-Rebating Statute Updates (U.C.A. §31A-23a-402.5)

This Bulletin is issued to notify the insurance industry of changes to Utah Code Annotated ("U.C.A.") [§31A-23a-402.5](#), Inducements, pursuant to two bills passed in the 2015 General Session: [HB 24](#), Insurance Modifications; and [HB 141](#), Insurance Related Inducements. This Bulletin supersedes Bulletins [2013-5](#) and [2014-4](#), to the extent any change outlined in this Bulletin is inconsistent with those Bulletins.

As outlined more fully below, HB 24 increases the monetary limit on a *de minimis* gift or meal and revises the definition of "fair market value." HB 141 addresses how a licensee may offer goods or services for free or less than fair market value.

HB 24

- U.C.A. §31A-23a-402.5(7) increases the *de minimis* gift or meal maximum from \$25 to \$100. The Insurance Department ("Department") presumes that the value of a gift or meal that is \$100 or less, on an individual basis, is a "social courtesy not conditioned on a quote or purchase of a particular insurance product."
- The change to the definition of "fair market value" in U.C.A. §31A-23a-402.5(9)¹ eliminates the word "individual," which changes the standard of measurement. Because "fair market value" is no longer determined based on what an individual purchaser would pay in the marketplace, without connection to other goods or services, a volume discount may be offered. Any volume discount offered must be reasonably calculated, consistent and verifiable by the Department upon request. A fee will be presumed to be reasonable if it is not less than what the licensee pays to a third party for the service or good.
- Both the increase of the "safe harbor" for gifts or meals from \$25 to \$100 and the change to the definition of "fair market value" take effect on May 12, 2015.

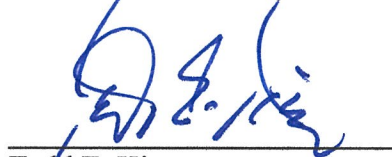
¹ 31A-23a-402.5(9) For purposes of this section, "fair market value" means what a knowledgeable, willing, and unpressured buyer would pay for a product or service to a knowledgeable, willing, and unpressured seller in the open market without any connection to other goods, services, including insurance services, or contracts, including insurance contracts, sold by the producer, consultant, or other licensee, or an officer or employee of the licensee.

HB 141

- HB 141 adds new subsections (10) and (11) to U.C.A. §31A-23a-402.5, Inducements. The new language in U.C.A. §31A-23a-402.5(10)² permits an insurance licensee to offer products or services for free or at a discounted rate, regardless of whether the free or discounted product or service is related to an offer or sale of an insurance product. The free or discounted products or services must be offered to the general public on the same terms. The free or discounted products or services must continue to remain free or discounted. The free or discounted products cannot be offered contingent on the receipt of an insurance quote, sale or future sale of an insurance product.
- A licensee cannot require a change of a client's agent of record in order to be offered free or discounted products or services.
- U.C.A. §31A-23a-402.5(11) requires that a conspicuous disclosure be made to the recipient that the products or services are not contingent upon the sale or future sale of an insurance product. The disclosure may be either verbal or written.
- Both sections (10) and (11) take effect on May 30, 2015.

This Bulletin does not apply to title insurers, individual title insurance producers or agency title insurance producers.

Dated this 8th of May, 2015.



Todd E. Kiser
Insurance Commissioner

² **31A-23a-402.5(10)** Notwithstanding any other provision of this section, a producer, consultant, or other licensee, or an officer or employee of a licensee, may offer, make available, or provide goods or services, whether or not the goods or services are directly related to an insurance contract, for free or for less than fair market value if:

(a) the goods or services are available on the same terms to the general public;
(b) receipt of the goods or services is not contingent upon the immediate or future purchase, continuation, or termination of an insurance product or receipt of a quote for an insurance product; and
(c) the producer, consultant, or other licensee, or an officer or an employee of a licensee, does not retroactively charge for the goods or services based on an event subsequent to receipt of the goods or services.